

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Mt. Carmel Public Utility Co.	:	
	:	07-0357
Proposed general increase in electric	:	
And natural gas rates. (Tariff filed on	:	
May 4, 2007).	:	

**BRIEF ON EXCEPTIONS
OF THE STAFF OF THE ILLINOIS COMMERCE COMMISSION**

The Staff Witnesses of the Illinois Commerce Commission (“Staff” and “Commission”), by and through its counsel, pursuant to Section 200.830 of the Rules of Practice (83 Ill. Adm. Code 200.830) of the Illinois Commerce Commission (“Commission”), respectfully submits its Brief On Exceptions (“BOE”) including Exceptions to the Proposed Order issued by the Administrative Law Judge (“ALJ”) on February 4, 2008, in this proceeding.

I. PROCEDURAL HISTORY

On May 4, 2007, Mt. Carmel Public Utility Company (“MCPU” or “Mt. Carmel” or the “Company”) filed revised tariff sheets (“Filed Rate Schedule Sheets”) seeking an increase in electric and gas rates, which increase was to become effective on June 18, 2007.

On February 4, 2008, the ALJ issued a Proposed Order (“PO”). Staff recommends changes to the PO adopting Staff’s position disallowing the pro forma adjustments for vehicles and new employees. Alternatively, if Staff’s adjustments are not adopted, Staff recommends removing the requirement that MCPU file monthly

reports with the Manager of the Commission's Accounting Department on the status of the purchase of the vehicles. The Exceptions reflecting Staff's proposed changes to the PO are provided within this BOE.

II. ARGUMENT

A. Pro Forma Vehicles

Staff disagrees with the ALJ that the purchase of the five vehicles by May 8, 2008 is reasonably certain. The Company filed its case with these pro forma adjustments on May 9, 2007. If the Company intended on purchasing these vehicles within 12 months of the filing date, the Board of Directors should have approved the purchase of these vehicles prior to the Company's filing date rather than waiting until November 2, 2007 when the Company was forced to make a showing of an intent to purchase. Purchase orders for the five vehicles were not issued until November 20, 2007, over six months after the filing date, and the Company did not provide all of the purchase orders to Staff until December 4, 2007, the day of the evidentiary hearing. Staff is unable to thoroughly review evidence that is presented on the day of the evidentiary hearing. There is insufficient time to consider the value of the evidence. Thus, Staff is not reasonably certain that the Company intends on purchasing the five vehicles prior to May 8, 2008 and recommends the following language changes to pages 11-12 of the PO:

MCPU, Staff and the City address the issue of whether this pro-forma adjustment, pursuant to 287.40, is reasonably certain to occur within 12 months of the filing of the tariffs, and whether the amount is determinable. MCPU initially took the position that it could not commit to purchasing these vehicles unless they were allowed into rate base, and if ~~there~~ they

were not allowed into rate base, then they would not be purchased. When this position was objected to by Staff and the City, MCPU indicates it took steps to satisfy the parties concerns. These steps included action by the Board of Mt. Carmel directing the purchase of the vehicles in question on November 2, 2007, and Mt. Carmel eventually issued purchase orders for the vehicles on November 20, 2007. The Company did not provide the purchase orders for the two vehicles to Staff until December 4, 2007, the day of the evidentiary hearing. It does not appear to the Commission that as of the evidentiary hearing, December 4, 2007, that any of the vehicles had in fact been purchased. Staff and the City remain opposed to this pro-forma adjustment, both indicating their position that there is insufficient evidence to show the Commission that these purchases will occur with a "reasonable certainty."

It is clear to the Commission that the position first adopted by MCPU, "if you give us these in rate base we'll buy them, and if you don't we won't", is insufficient to support the requested pro-forma adjustment. ~~The question then becomes what is sufficient to show that these purchases are reasonably certain to occur. As noted, part of the difficulty is that there is in essence a one year timeline to make the change, when a rate case has a timeline of approximately 11 months. Part 287.40 clearly contemplates a utility being rightfully allowed to make a pro-forma adjustment to rate base for something that will occur after an Order has been entered by the Commission. The Commission is also concerned with providing critical evidence on the day of the evidentiary hearing. If the Company actually intended on purchasing these vehicles prior to May 8, 2008, a purchase order should have been made available as evidence prior to the evidentiary hearing. Parties cannot thoroughly evaluate critical evidence that is provided on the day of the evidentiary hearing.~~

The Commission must therefore judge what assurances have been made by the utility, and whether these assurances show that the purchases are a reasonable certainty. MCPU has presented evidence showing that its Board has directed that the vehicles in question be purchased prior to May 4, 2008. MCPU further presented at hearing copies of purchase orders which had been issued for each of the vehicles for which Mt. Carmel is seeking the pro forma adjustment. It appears to the Commission that Mt. Carmel has not made a sufficient showing that the purchase of each of the five vehicles is reasonably certain to occur prior to May 4, 2008, ~~and or~~ that the cost is determinable. ~~As Mt. Carmel noted, it does not appear that any party has contested whether the costs are determinable or reasonable, but only whether the purchases were reasonably certain to occur. The Commission is at a loss as to what evidence could have been adduced that would have made the purchases more certain to occur, so as to satisfy Staff and the City, short of the actual purchase of the~~

~~vehicles. Importantly, the question is whether there is reasonable certainty, not absolute certainty.~~

~~The Commission is aware of the risk of allowing this pro-forma adjustment, placing these vehicles into Mt. Carmel's rate base, and then, should these vehicles not be purchased, could put Mt. Carmel into an over-earning situation. The Commission trusts that Mt. Carmel understands the risk that taking that action would mean to future proceedings involving MCPU. The Commission would certainly take a dim view of any utility which made certain representations and assurances to the Commission of the actions it would take, and then fails to follow through on those representations. Mt. Carmel has represented to the Commission that these vehicles will be purchased prior to May 4, 2008, and has presented various testimony and documents to support that position. The Commission finds that there is a reasonable certainty that these vehicles will be purchased prior to May 4, 2008, and will therefore allow this pro-forma adjustment by Mt. Carmel. The Commission also deems it appropriate to direct Mt. Carmel to file a report on the first of each month to the Manager of the Commission's Accounting Department on the status of the purchases, until all five vehicles have been purchased. Should these filings not indicate that each of the vehicles have been purchased by May 4, 2008, then the Manager of the Accounting Department, in consultation with other Commission Staff, shall consider whether it is appropriate to recommend that the Commission begin a rate investigation on the Commission's own motion under 9-250 of the Act. The Commission notes further that neither Staff nor the City questioned whether the amounts for these vehicles was determinable or unreasonable, therefore the Commission will find that the purchase prices of the vehicles in question are determinable.~~

~~The Commission would note that while it is of course concerned with the added expense to customers by allowing this adjustment, the Commission must also concern itself with a utility's ability to provide reliable service to its various customers. No party has questioned whether these vehicles are needed by Mt. Carmel to provide safe and efficient utility service to its customers.~~

The Commission also notes an issue raised by the City as to the order in which the parties presented their testimony at the evidentiary hearing, indicating that the order of witnesses was contrary to customary Commission practice. It appears from a reading of the transcript that the order of witnesses was decided on by the parties, and there appear to have been no requests to recall witnesses after Mr. Long's testimony. While the Commission discourages the filing of evidence on the day of an evidentiary hearing whenever possible, this may not always be possible.

However, the weight given the evidence is reduced when the parties are not given enough time to thoroughly evaluate the evidence. The Commission ~~also does~~ notes that both the minutes of the Board of Directors and the issuance of purchase orders for the vehicles were discussed in Mr. Long's surrebuttal testimony, filed prior to the evidentiary hearing. The Commission is satisfied that the documents to which the City objected during hearing were properly admitted into evidence in this proceeding for the Commission to consider and given the appropriate weight.

The Commission will therefore not allow ~~Mt. Carmel to make~~ the requested pro forma adjustment to rate base for the vehicles in question, ~~subject to the conditions discussed above,~~ and will not adopt the proposed adjustment suggested by Staff and the City.

In the event the Commission does not adopt Staff's adjustment, Staff appreciates the ALJ's concerns on whether or not it is reasonably certain that MCPU will actually purchase the vehicles. Staff also appreciates the ALJ's attempt to extend the time in which MCPU can justify the PO's decision. However, the facts remain that the decision on whether to include the pro forma vehicles must be made based upon the record when it was marked heard and taken. Once a decision has been made, it is not Commission practice to check to see if the Commission guessed "correctly". Unless rates are billed subject to refund, there is no basis to require the Company to report whether the vehicles were actually purchased. Thus, Staff does not support the PO's recommendation for reporting requirements and proposes the following language changes on pages 11 - 12:

The Commission is aware of the risk of allowing this pro-forma adjustment, placing these vehicles into Mt. Carmel's rate base, and then, should these vehicles not be purchased, could put Mt. Carmel into an over-earning situation. The Commission trusts that Mt. Carmel understands the risk that taking that action would mean to future proceedings involving MCPU. The Commission would certainly take a dim view of any utility which made certain representations and assurances to the Commission of the actions it would take, and then fails to follow through on those representations. Mt. Carmel has represented to the Commission that these vehicles will be purchased prior to May 4, 2008, and has presented various testimony and documents to support that position. The Commission finds that there is a reasonable certainty that these vehicles will be purchased prior to May 4, 2008, and will therefore allow this pro-forma adjustment by Mt. Carmel. ~~The Commission also deems it appropriate to direct Mt. Carmel to file a report on the first of each month to the Manager of the Commission's Accounting Department on the status of the purchases, until all five vehicles have been purchased. Should these filings not indicate that each of the vehicles have been~~

~~purchased by May 4, 2008, then the Manager of the Accounting Department, in consultation with other Commission Staff, shall consider whether it is appropriate to recommend that the Commission begin a rate investigation on the Commission's own motion under 9-250 of the Act.~~ The Commission notes further that neither Staff nor the City questioned whether the amounts for these vehicles was determinable or unreasonable, therefore the Commission will find that the purchase prices of the vehicles in question are determinable.

B. Pro Forma Employees

Staff disagrees with the ALJ that it is reasonably certain that the additional three employees will be hired by May 8, 2008. Hiring employees is even less certain than sending out a purchase order to a third party vendor in which there is reasonable assurance that the vendor can provide the ordered merchandise. However, to hire an employee, the Company must determine the job description for each position, go through a bid process with existing personnel, advertise the resulting open positions, accept resumes and applications, interview, extend offers of employment, and receive acceptances of the employment offers. The record contains nothing to document the Company's intent of hiring the three additional employees except the minutes of the November 2, 2007 Board meeting. And, for the Board to not approve the hiring of additional employees that was reflected in the Company's filing on May 9, 2007 until six months later, makes Staff question the intent of the Company. Staff remains not reasonably certain that the three employees will be hired by May 8, 2008 and suggests the following language changes to Page 19 of the PO:

The Commission notes that the arguments regarding this adjustment are essentially the same as those regarding the pro forma vehicle adjustment discussed above, and in fact, portions of the parties Briefs discuss the two issues together. Based upon the evidence in the record, it appears to the Commission that Mt. Carmel has not presented sufficient evidence to

demonstrate that these personnel hires for the three of the five employees are reasonably certain to occur prior to May 4, 2008, in conformity with Part 287.40. ~~The Commission again must balance the costs to customers with a utility's ability to provide safe, efficient and reliable service to those same customers. No party has questioned that the hiring of these personnel will aid Mt. Carmel in providing such service.~~ The Commission notes that in support of this opinion, Mt. Carmel hasd in fact ~~already~~ filled two of the five positions and those positions have been included in the revenue requirement resulting from this order, ~~adding some credence to the belief that Mt. Carmel will follow through with the filling of these new positions.~~ The Commission finds, as expressed earlier in the pro forma vehicle section of this Order, that Mt. Carmel has not shown pursuant to Part 287.40 that these pro forma adjustment are reasonably certain to occur prior to May 4, 2008, ~~and or~~ that the amounts of these adjustments are determinable. The Commission will therefore not allow ~~Mt. Carmel to~~ make this pro forma adjustment to its 2006 historical test year, and will ~~not~~ adopt the proposed adjustment put forth by Staff and the City.

III. CONCLUSION

WHEREFORE, for all the reasons set forth above, the Staff of the Illinois Commerce Commission urges that its recommendations and proposals be adopted in their entirety consistent with the arguments set forth herein.

Respectfully submitted,



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